

304 CMR: DIVISION OF STATE PARKS AND RECREATION

304 CMR 10.00: FORESTER LICENSING

Section

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10.01: Authority, Purpose and Regulation Review

(1) Authority. The Director of the Division of State Parks and Recreation, Department of Conservation and Recreation, promulgates 304 CMR 10.00 pursuant to the authority granted under M.G.L. c. 132, §§ 47 through 50.

(2) Purpose. M.G.L. c. 132, §§ 47 through 50 requires the licensing of foresters. The purpose of 304 CMR 10.00 is to:

- (a) protect forest landowners by insuring that individuals offering professional forestry services meet minimum requirements of education, experience and professionalism; and,
- (b) assure a minimum standard of care for the Commonwealth's forests and associated natural resources.

10.02: Definitions

Director means the Director of the Division of State Parks and Recreation, Department of Conservation and Recreation, or his or her designee.

Experience of a professional nature means forest management planning and decision-making which requires the integration of biological, social, and economic information over a multi-year time frame to meet objectives of a forest landowner, and, for credit purposes, shall have been substantially of a full-time nature.

Experience of a technical nature means forestry work in which the individual is responsible for implementing a forest management action or activity, and, for credit purposes, shall have been substantially of a full-time nature.

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Forestry means the science, the art, and the practice of conserving and managing for human benefit the natural resources, including trees, other plants, animals, soil and water, that occur on, and in association with, forest lands.

Licensed Forester means one who has obtained a Massachusetts license to practice forestry under the provisions of 304 CMR 10.00 as promulgated pursuant to M.G.L. c. 132, §§ 47 through 50.

Practice of Forestry means any professional services requiring the application of forestry principles and techniques including, but not limited to: forest inventory, forest management planning, timber appraisal, the responsibility for the direction and supervision of silvicultural activities, use and protection of forested areas, and the evaluation of the economic and biological consequences of forest management activities.

Professional services means practice of forestry services offered to forest landowners or their agents but not to one's own lands or those of immediate family.

Revoke means to annul, void, cancel or take back a license to practice forestry.

Society of American Foresters or SAF means the national professional forestry organization which, by an act of Congress, is the only body authorized to accredit programs offering a bachelor's degree in forestry.

Suspend means to temporarily withdraw a license to practice forestry for a specified period of time.

10.03: Forester Licensing Board

(1) Composition. The Director shall appoint as his or her agent a five member Forester Licensing Board (hereinafter referred to as the "FLB") for the purposes of assisting and advising him or her in the administration of M.G.L. c. 132, §§ 47 through 50 and 304 CMR 10.00. One member shall be an employee of a federal, state, or a municipal government agency; one member shall be a licensed forester employed in the private sector; one member shall be employed as a faculty member of a college or university in a forest resources or natural resources management program; one member shall be a landowner of classified forest land; and, one member shall be a representative of an environmental organization, a land trust, or a consumer

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group. Four of the members shall have the qualifications necessary to obtain a license to practice forestry in Massachusetts as defined in 304 CMR 10.00, two of whom shall be Licensed Foresters.

(2) Terms. At the time the FLB is initially appointed, the Director shall appoint two members for one-year terms, two members for two-year terms, and one member for a three-year term. Subsequent appointments shall be for three-year terms. No member shall be appointed for more than two consecutive full terms.

(3) Responsibilities. The FLB shall assist and advise the Director by performing the following responsibilities:

- (a) examining the credentials of all first time applicants to become a Licensed Forester, and recommending to the Director the names of those deemed by the FLB to be qualified or not qualified for such license;
- (b) reviewing, upon the request of the Director, the credentials of individuals applying for renewal of a license to practice forestry in the Commonwealth, and recommending to the Director the names of all those deemed by the FLB to be eligible or ineligible;
- (c) assisting and advising the Director in implementing disciplinary and investigatory proceedings as described in 304 CMR 10.05; and,
- (d) maintaining a written record of any deliberations and decisions reached at each meeting.

(4) Meetings. The FLB shall meet at least once a year, or as often as necessary to comply with the 90-day application processing requirement in 304 CMR 10.04. The Director shall call the first meeting of the FLB. The last order of business at each meeting shall be to set the time and place of the next meeting, subject to the approval of the Director. A meeting shall be convened at the request of any three members. The Director shall appoint one of its members to serve as chair. Three members shall constitute a quorum.

10.04: License, Application and Requirements

(1) License Required. As of June 30, 1999, no person shall hold him or herself out as a forester and engage in the practice of forestry in the Commonwealth, unless licensed in accordance with 304 CMR 10.04. A license shall not be required for persons who provide services in their capacity as tree wardens, arborists, utility foresters and urban foresters, and other like practices. If, however, these persons engage in the practice of

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forestry as defined in 304 CMR 10.02, and hold themselves out as foresters, they are required to have a Forester License.

(2) Education and Experience Requirement. To become a Licensed Forester, an applicant shall demonstrate an understanding of the following core subject areas of forestry as they apply to forestry in Massachusetts: Forest Biology/Ecology; Forest Resource Measurements; Forest Resource Management, including silviculture and timber harvesting; and, Forest Resource Policy and Administration. Not less than one year of work of a professional or technical nature must occur within the three years preceding the date of license application. The minimum education and experience requirements for a Licensed Forester shall be:

(a) Successful completion of a Bachelors of Science (BS) degree from a SAF-accredited professional forestry degree program, or a program approved by the Director, and which included courses in each of the following areas:

1. Forest Biology/Ecology;
2. Forest Resource Measurements;
3. Forest Resource Management including, but not limited to, silviculture and timber harvesting;
4. Forest Resource Policy and Administration;

plus three years of forestry work experience of a character that prepared the applicant to practice forestry competently. At least two of the three years of work experience must be experience of a professional nature, and up to one year may be work experience of a technical nature provided that not less than one year of work of a professional or technical nature must occur within the three years preceding the date of license application; or,

(b) Successful completion of a Masters degree (MS or MF) in forestry or related post-baccalaureate degree, which includes at least 30 credit hours, and courses in each of the following areas:

1. Forest Biology/Ecology;
2. Forest Resource Measurements;
3. Forest Resource Management, including, but not limited to, silviculture and timber harvesting;
4. Forest Resource Policy and Administration;

plus three years of forestry work experience of a character that prepared the applicant to practice forestry competently. At least two of the three years of work experience must be experience of a professional nature, and up to one year may be work experience of a technical nature provided that

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not less than one year of work of a professional or technical nature must occur within the three years preceding the date of license application.

(c) Successful completion of an Associates degree in a SAF-recognized technical forestry education program, or a technical forestry education program approved by the Director, plus five years of forestry work experience of a character that has prepared the applicant to practice forestry competently. At least four of the five years of work experience must be experience of a professional nature, and up to one year may be work experience of a technical nature provided that not less than one year of work of a professional or technical nature must occur within the three years preceding the date of license application.

(d) Any additional forestry or natural resource management education at an accredited institution beyond the minimum requirements described in 304 CMR 10.04(2)(a), (b), and (c) may count for no more than one year of work experience.

(3) License Application and Approval.

(a) To become a Licensed Forester, an applicant shall submit to the Director a completed application on a form developed by the Director and accompanied by the required license fee in the form of a check or money order made payable to the Commonwealth of Massachusetts.

(b) The Director shall approve or deny an application for a license within 90 days of receiving all required application materials. The Director shall provide each qualified applicant with a license. Applications not acted upon within 90 days of receipt of all required application materials shall be deemed approved.

(4) Appeal of a License Denial. If an applicant's application is denied, he or she may appeal in writing to the Director within 30 days of the receipt of notification of license denial. The Director shall make a decision on an appeal within 90 days of receipt of the appeal.

(5) Licensing Fees. The initial application fee is \$100.00, and the annual renewal fee is \$50.00. Fees may be adjusted by the Director to sustain the Forester Licensing program.

(6) License Renewal.

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- (a) Not less than 30 days before the expiration of his or her license, a Licensed Forester shall submit a renewal application accompanied by the required fee to the Director.
- (b) If within sixty (60) days subsequent of the date of license expiration any Licensed Forester fails to renew his or her license, he or she shall not engage in the practice of forestry until a new license is issued. Each Licensed Forester seeking the renewal of his or her license shall comply with the Director's policy on continuing education for Licensed Foresters.
- (c) Any Licensed Forester who fails to renew his or her license or fails to meet the continuing education requirements of the Director's policy shall be ineligible for application for a new license for a period of twenty-four (24) months from the date of license expiration.

10.05: Disciplinary Actions by the Director

- (1) Revocation/Suspension. The Director may revoke or suspend a forester's license to practice forestry within the Commonwealth upon a finding that the forester has engaged in fraud, negligence, deceit, incompetence, unprofessional conduct or gross misconduct in the practice of forestry, or for any offense against the laws of the Commonwealth relating thereto. The Director may initiate proceedings under 304 CMR 10.05(3) upon receipt of notice that a Licensed Forester has been found guilty of or in violation of any forestry related federal, state, or municipal law or regulation.
- (2) Hearings. A Licensed Forester has 30 days after receipt of written notice of denial of renewal, suspension or revocation to request that the Director hold a hearing. Failure to request a hearing within 30 days of receipt of a notice of suspension or revocation shall result in automatic suspension or revocation of the license. The Director shall hold a hearing within 30 days of receipt of a request for a hearing, and shall provide reasonable notice of said hearing to the Licensed Forester.
- (3) Initiation of Investigatory Proceedings.
 - (a) Any person may file a complaint with the Director or the Forester Licensing Board concerning the conduct of a Licensed Forester. The Forester Licensing Board shall refer all complaints filed with it to the Director. The Director shall initiate proceedings under 304 CMR 10.05(3) upon receipt of a properly filed complaint. A properly filed complaint shall:

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1. be in writing and shall be either hand-delivered or mailed certified mail/ return receipt requested to the Director of State Parks and Recreation or the Forester Licensing Board,, Department of Conservation and Recreation ; and,
2. contain the name and current address of the complainant, and shall set forth:
 - a. the name of the Licensed Forester whose actions are the source of the complaint;
 - b. the specific facts or circumstances giving rise to the complaint;
 - c. the particular action or conduct in question; and,
 - d. any provisions of federal, state or local law and regulation on which the complaint is based.

The Director shall send a copy of the complaint to the Licensed Forester who is the subject of the complaint by certified mail/return receipt requested to the last address on file with the Division, and to the FLB.

(b) The Director shall review the complaint and determine whether proceedings to investigate the conduct of the Licensed Forester are warranted, and if so, request the FLB to initiate an investigation and render a decision in the matter.

(4) Investigation.

(a) The chair of the FLB shall appoint one of the members of the FLB, or some other person or persons, to act as an investigator in the particular case, and shall forthwith notify in writing both the Licensed Forester against whom the complaint is registered and the complainant of that appointment.

(b) If a member of the FLB files the initial complaint, that member must excuse himself or herself from all proceedings and deliberations pertaining to the complaint.

(c) The investigator shall:

1. contact and question each party individually about the complaint and take such other actions as the investigator deems appropriate to investigate the charges;
2. interview any other persons deemed appropriate;
3. provide to the FLB a written report containing a summary of the evidence that, in the opinion of the investigator, could be proved at a disciplinary hearing; and,

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4. distribute copies of the investigative report to each member of the FLB.

(5) FLB Decision and Appeal.

(a) The FLB shall review the investigator's report, and shall make a recommendation to the Director whether or not to reprimand, limit, restrict, suspend, or revoke the Licensed Forester's license. The Director shall inform the Licensed Forester and the complainant(s) of the Director's decision by certified mail/return receipt requested.

(b) The Licensed Forester shall have 14 days after receipt of the Director's decision to file an appeal to the Director.

(c) If there is an appeal, the Director shall conduct an adjudicatory proceeding in conformance with M.G.L. c. 30A ..

(6) Record.

(a) Any decision or recommendation by the FLB on matters considered pursuant to 304 CMR 10.05 shall be by majority vote. Upon issuance, the FLB shall transmit any recommendation under 304 CMR 10.05(6), in writing, to the Director.

(b) In the event of suspension or revocation, a copy of the FLB's recommendation and Director's order shall be issued at the expiration of the appeal period or after an adjudicatory proceeding to the equivalent body of each state in which the respondent Licensed Forester is licensed to practice.

(7) Voluntary Surrender by a Licensed Forester.

(a) A Licensed Forester who is the subject of a complaint or an investigation into allegations of misconduct may voluntarily surrender his or her license. The Licensed Forester shall deliver to the Director an affidavit stating that the Licensed Forester desires to voluntarily surrender the license and that:

1. The surrender is freely and voluntarily rendered;
2. The Licensed Forester is not being subjected to coercion or duress;

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3. The Licensed Forester is aware of the implications of the surrender and agrees to the terms of the voluntary surrender as set forth by the Director;
4. The Licensed Forester is aware that there is presently pending an investigation into allegations that the Licensed Forester has been guilty of misconduct, the nature of which the Licensed Forester shall specifically set forth; and,
5. The Licensed Forester acknowledges that the material facts upon which the complaint is predicated are true.

(8) Reinstatement.

(a) Unless ordered otherwise by the Director, a person previously licensed as a Licensed Forester by the Director may:

1. apply for reinstatement of a revoked or voluntarily surrendered license after two years have passed from the date of revocation; or,
2. apply for reinstatement or return to good standing following a period of license suspension or probation not sooner than two months prior to the expiration of the period of suspension or probation ordered by the Director or consented to by the applicant.

(b) If the Director denies an application for reinstatement, an applicant may not re-apply to the Director for reinstatement until at least six months have passed since the date of denial of the application, unless otherwise ordered by the Director.

(9) Notice of Director's Decision. If the FLB recommends that the Director reprimand the Licensed Forester, or limit, restrict, suspend, or revoke a license, then at the expiration of the appeal period or upon the completion of an adjudicatory proceeding, the Director shall promptly issue a notice setting forth the full name of the Licensed Forester, his or her professional address as it appears in the records of the FLB, and the fact that discipline has been imposed. Said notice shall state that the license has been revoked or voluntarily surrendered pursuant to 304 CMR 10.05, or that the license has been suspended and the time during which the Director's disciplinary action shall be in effect, or that a disciplinary action has been imposed, whichever is appropriate. The notice shall specify whether the license has been limited or restricted and the terms thereof which relate to the time, place or manner in which the Licensed Forester may practice. 304 CMR 10.05 shall apply to disciplinary actions taken both with and without the agreement of the Licensed Forester, and it shall not be waived by the Director.

10.06: Standards of Professional Conduct

- (1) Licensed Foresters shall adhere to the ethical and professional standards in 304 CMR 10.06. Non-compliance with these standards may result in the Director taking disciplinary action against the Licensed Forester.
- (2) Licensed Foresters shall advocate and practice land management consistent with ecologically sound principles. Licensed Foresters shall advise their clients or employers of the long and short term consequences of management alternatives.
- (3) Licensed Foresters shall utilize their knowledge or skills for the benefit of society. Licensed Foresters shall strive for accurate, current and increasing knowledge of forestry, shall communicate such knowledge, and shall challenge and correct untrue statements about forestry.
- (4) Licensed Foresters shall base public comment on forestry matters on accurate knowledge, and shall not distort or withhold pertinent information to substantiate a point of view. Prior to making public statements on forest policies and practices, a Licensed Forester shall indicate on whose behalf the statements are made.
- (5) Licensed Foresters shall make only accurate statements of the services that they are qualified and prepared to perform or provide, and shall perform only those services for which the Licensed Foresters are qualified by education or experience.
- (6) Licensed Foresters shall engage, or advise their employers to engage, other experts and specialists in forestry whenever the employer's interest would be served by such action, and the Licensed Forester shall work cooperatively with other professionals.
- (7) Licensed Foresters supplying forestry services shall disclose a list of all fees, salaries or other compensation to be charged for their services to prospective clients.
- (8) Licensed Foresters shall disclose all known or potential conflicts of interest involving substantial value to their employers, clients or bidders, by promptly informing them of any business association, interest or other circumstances which would or could influence or give the impression of influencing their judgment or the quality of their services. For purposes of 304 CMR 10.06, "substantial value" shall constitute business relationships

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which comprise, directly or indirectly, \$50.00 or more within a calendar year.

(9) Licensed Foresters shall not accept or solicit compensation, financial or otherwise, from more than one party on the same project unless circumstances are fully disclosed in writing to all parties, including contractors and their agents.

(10) Licensed Foresters shall not voluntarily disclose information concerning the affairs of employers or applicants without express permission, and shall keep proprietary, financial or personal information provided to the Licensed Forester by a client or employer confidential unless disclosure is authorized by the client or employer or is required by applicable law.

(11) At the time of public or private offerings, Licensed Foresters are required to disclose the methods of measurements and data developed in these measurements.

(12) Licensed Foresters shall notify the FLB if their registration, certification or license is suspended or revoked in another jurisdiction.

(13) When boundary work determines ownership of forest products or land on which forest service will be performed, Licensed Foresters shall be prepared to demonstrate that they have performed due diligence on boundary research prior to providing forestry services. At no time shall Licensed Foresters represent that their boundary determination services are relied on for any purpose other than the practice of forestry.

10.07: Severability

If any section, subsection, division or subdivision of 304 CMR 10.00 shall be determined to be invalid, such determination shall apply to the particular section, subsection, division or subdivision, and all other provisions of 304 CMR 10.00 shall remain valid and in effect.

REGULATORY AUTHORITY

304 CMR 10.00: M.G.L. c. 132, §§ 47 through 50.